

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHARLES O. BRADLEY TRUST, ET AL.,

Plaintiffs,

No. C 04-02239 JSW

v.

ZENITH CAPITAL LLC, ET AL.,

Defendants.

**NOTICE OF TENTATIVE  
RULING AND QUESTIONS  
REGARDING MOTION TO  
DISMISS EIGHTH CLAIM FOR  
RELIEF FROM SECOND  
AMENDED COMPLAINT AND  
MOTION TO STRIKE  
ALLEGATIONS OF FIDUCIARY  
DUTY**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE  
NOTICE OF THE FOLLOWING **TENTATIVE** RULING AND QUESTIONS FOR THE  
HEARING SCHEDULED ON JANUARY 20, 2006 AT 9:00 A.M.:

The Court has reviewed the parties' papers and, thus, does not wish to hear the parties  
reargue matters addressed in those pleadings. If the parties intend to rely on authorities not  
cited in their briefs, they are ORDERED to notify the Court and opposing counsel of these  
authorities reasonably in advance of the hearing and to make copies available at the hearing. If  
the parties submit such additional authorities, they are ORDERED to submit the citations to the  
authorities only, without argument or additional briefing. *See* N.D. Civ. L.R. 7-3(d). The  
parties will be given the opportunity at oral argument to explain their reliance on such authority.

1 The Court **tentatively** GRANTS the Albrecht Defendants' motion to dismiss the eighth  
2 claim for relief without leave to amend and **tentatively** GRANTS the Albrecht Defendants'  
3 motion to strike the allegations regarding fiduciary duty.

4 The parties shall each have ten minutes to address the following questions:

- 5 1. Do the Albrecht Defendants move to strike just paragraph 52 subsection (D) of  
6 the second amended complaint regarding allegations of fiduciary duty owed to  
7 plaintiffs, or do the defendants seek to dismiss the entire cause of action for  
8 misrepresentation? What are the specific page and line designations that the  
9 Albrecht Defendants move to strike?
- 10 2. Can Plaintiffs maintain a cause of action for misrepresentation against the  
11 Albrecht Defendants under the holding in *Murphy v. BDO Seidman, LLP*, 113  
12 Cal. App. 4th 687, 694 (2003)?
- 13 3. Do the parties have anything further they wish to address?

14 Dated: January 17, 2006

  
JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE